

PETITION -- HOUSE

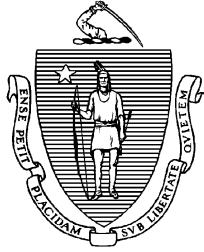
CHIEF SPONSOR:

Representative Fallon of Malden

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts
in General Court assembled.*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill or resolve.

[illegible]



The Commonwealth of Massachusetts

IN THE YEAR TWO THOUSAND FIVE

AN ACT CREATING THE NON-INDIGENOUS SPECIES MANAGEMENT PLAN AND LISTING PROCESS FOR NON-NATIVE SPECIES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Definitions

Terms. For the purposes of this chapter, the following terms have the meanings given them.

- (A) "Biological control organism" means any species used to control a harmful non-indigenous species.
- (B) "Control" means eradicating, suppressing, reducing, or managing harmful non-indigenous species populations, preventing the spread of harmful non-indigenous species from areas where they are present and taking steps such as protection and restoration of native species populations and habitats to reduce the impacts of harmful non-indigenous species and to prevent further invasions of harmful non-indigenous species.
- (C) "Department" means the Department of Natural Resources.
- (D) "Director" means the Director of the Department of Natural Resources.
- (E) "Dispersal" refers to the natural or human-related spread of non-indigenous species from one water, wetland, or land area to other waters, wetlands, or land areas.
- (F) "Established" means, when used in reference to a species, occurring as a reproducing, self-sustaining population in an open ecosystem.
- (G) "Importation" means the act of bringing or introducing species into any place subject to the authority of the state or other appropriate jurisdictions from outside of the geographical borders of the state.
- (H) "Intentionally" means to purposely or knowingly commit an act, such as an introduction, release, transportation, importation, or exportation.
- (I) "Introduction" means the intentional or unintentional release, escape, dissemination, or placement of a species into an ecosystem as a result of human activity.
- (J) "Harmful non-indigenous species" means a non-indigenous species that can naturalize and either:
 - 1. Causes or may cause displacement of, or otherwise threaten native species in their natural communities or ecosystems; or
 - 2. Threatens or may threaten natural resources or their use in the state.
- (K) "Manage" means to prevent new harmful non-indigenous species introductions into the state; to limit the dispersal of established harmful non-indigenous species populations into uninfested land areas, wetlands, and waters of the state; and to abate harmful ecological, economic and public health impacts resulting from the introduction, dispersal, or presence of harmful non-indigenous species in the state.
- (L) "Native species" refer to any species originally living, growing, or produced in an ecosystem within its historic range.
- (M) "Naturalized" refers to a non-indigenous species that is established as a self-sustaining population through natural reproduction in the wild outside its native range.
- (N) "Non-indigenous species" means any non-native plant, animal, or other viable biological material that enters and disperses in an ecosystem beyond its native range.
- (O) "Permit" means a written authorization, including by electronic methods, by the Director to propagate, possess, import, purchase, or transport species under conditions prescribed by the Director pursuant to this Act.

- (P) "Possession" means having direct physical control of a species at a given time or having both the power and intention to exercise dominion or control of a species either directly or through another person or persons.
- (Q) "Prevent" means to identify and interrupt pathways by which harmful non-indigenous species can be imported, introduced, and dispersed.
- (R) "Prohibited non-indigenous species" or "prohibited species" means a harmful non-indigenous species that has been designated as a prohibited non-indigenous species in a rule adopted by the Director under Section 3. Prohibited species are designated for their harmful impact to native species, ecosystems, and natural resources of the state.
- (S) "Restricted non-indigenous species" or "restricted species" means a harmful non-indigenous species that has been designated as a restricted non-indigenous species in a rule adopted by the Director under Section 3. Restricted species are subject to permitting and regulations deemed appropriate by the Director.
- (T) "Species" means a group of organisms all of which have a high degree of physical and genetic similarity, generally interbreed only among themselves, and show persistent differences from members of allied groups of organisms. The term "species" includes any subspecies of animal, plant, or biological material, and any distinct population segment of any species or animal, plant, or biological material which interbreeds when mature.
- (U) "Stakeholders" include, but not limited to, state and local government agencies, academic institutions, the scientific community, regional entities, tribal governments, non-government entities including environmental, agricultural and conservation organizations, trade groups, commercial interests, and private landowners.
- (V) "Stocking" means the intentional introduction of any life stage of a plant or animal into public or private lands, wetlands or waters of the state.
- (W) "Transport" means to cause or attempt to cause a harmful non-indigenous species to be carried or moved into, across, or within state boundaries, and includes accepting or receiving the species for transportation or shipment.
- (X) "Unlisted non-indigenous species" or "unlisted species" refers to those non-indigenous species that have not been designated as a prohibited non-indigenous species, a restricted non-indigenous species, or an unrestricted non-indigenous species in a rule adopted by the Director under Section 3.
- (Y) "Unrestricted non-indigenous species" or "unrestricted species" means a non-indigenous species that has been designated as an unrestricted non-indigenous species in a rule adopted by the Director under Section 3. Unrestricted species do not require any regulation or permitting because they have been evaluated as relatively harmless for one or more of the following reasons: low likelihood to survive in waters, wetlands, or land areas of the state upon introduction; low level of potential impact to the native ecosystem or to resource use; or populations already naturalized in the state.

SECTION 2. Management Authority.

Legal authority shall be granted to the Director of the Department of Natural Resources to facilitate the prevention of introduction and dispersal of harmful non-indigenous species in the state. Key responsibilities to be associated with this management authority are as follows:

- (A) *Interjurisdictional agreements:* The Director shall seek cooperation, as appropriate, with federal, state and tribal authorities; regional entities; political jurisdictions of the state; and with other state agencies and organizations for the administration of any program established herein.
- (B) The Director shall establish a statewide program to prevent and curb the spread of harmful non-indigenous species. In addition, the Director shall develop and implement programs that are compatible with existing federal and state legislation which include, among others, the Non-indigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701-4741), the National Invasive Species Act of 1990 (16 U.S.C. 42), the Plant Protection Act (7 U.S.C. 7701-7772).
- (C) *Program Implementation:*
 - 1. The following mechanisms shall be authorized and utilized to facilitate program implementation: classification and designation of non-indigenous species; regulatory and rule-making provisions; monitoring mechanisms; research projects; permit and inspection procedures; enforcement and penalty stipulations; information and education activities; funding mechanisms; restorations of native species and habitat; regulation of biological control agents; incentives for private landowners; and emergency action protocols.

2. The Director is authorized to utilize the following detection and enforcement mechanisms: seizure, quarantine, and disposal of prohibited, restricted, and unlisted species. The Director is authorized only in the case of emergency to bypass notice periods for entering private lands.
3. The Director is authorized to routinely and systematically survey private and public lands for the presence of non-indigenous species and to map non-indigenous species location and those areas particularly at risk for non-indigenous species.

(D) *State Agency Duties*

- (1) Each state agency whose actions may affect the status of harmful non-indigenous species shall, to the extent practicable and permitted by law:
 - (a) identify such actions;
 - (b) subject to the availability of appropriations, and within Administration budgetary limits, use relevant programs and authorities to:
 - (i) prevent the introduction of harmful non-indigenous species;
 - (ii) detect and respond rapidly to and control populations of such species in a cost-effective and environmentally sound manner.
 - (iii) monitor non-indigenous species populations accurately and reliably;
 - (iv) provide for restoration of native species and habitat conditions in ecosystems that have been invaded;
 - (v) conduct research on non-indigenous species and develop technologies to prevent introduction and provide for environmentally sound control of harmful non-indigenous species; and
 - (vi) promote public education on harmful non-indigenous species and the means to address them; and
 - (c) not authorize, fund , or carry out actions that is believes are likely to cause or promote the introduction or spread of harmful non-indigenous species in the state of Massachusetts unless, pursuant to guidelines that is has prescribed, the agency has determined and made public its determination that the benefits of such actions clearly outweigh the potential harm caused by invasive species; and that all feasible and prudent measures to minimize risk of harm will be taken in conjunction with the actions.

(E) *Annual Report*. By January 15 each year, the Director shall submit a report on a harmful non-indigenous species to the legislative committees having jurisdiction over environmental and natural resource issues. The report must include:

- (1) Detailed information on expenditures for administration, education, management, inspections, and research;
- (2) Detailed information on the loss of state resources due to harmful non-indigenous species;
- (3) An analysis of the effectiveness of management activities conducted in the state, including but not limited to chemical and biological control, harvesting, takings, educational efforts, inspections, and enforcement actions,
- (4) Information on the participation of stakeholders in control efforts;
- (5) Information on management efforts in other states;
- (6) Information on the progress made in the control of each listed species;
- (7) An assessment of future management needs.

SECTION 3. Classification and designation of non-indigenous species.

(A) *Classes*. The Director shall, as provided in this chapter, classify non-indigenous species according to the following categories:

1. Prohibited non-indigenous species, which may not be possessed, imported, purchased, sold, propagated, transported, or introduced except as provided in Section 4;

2. Restricted non-indigenous species, which may not be introduced except as provided in Section 5; and
3. Unrestricted non-indigenous species, which are not subject to regulation under this chapter.

(B) *Criteria.* The Director shall use the best available science and shall consider the following criteria in classifying species under this chapter:

1. Whether a species is native or non-indigenous;
2. The likelihood that the species, upon introduction, will survive, naturalize, and spread to other land areas, wetlands, or waters of the state;
3. The magnitude of adverse impacts of the species on native species and ecosystems on the environment and uses of natural resources in the state, including the following: the health and population stability of native species, the natural ecosystem and long-term genetic integrity of native species, human health, recreation, commercial enterprises, industrial land and water-users, and other appropriate user groups;
4. The technical and economic feasibility of eradication or controlling the spread of the species once it is introduced in the state;
5. Whether the species carries any known diseases, parasites or any non-indigenous species or other viable biological materials; and
6. Other criteria the Director deems appropriate.
7. Biological control agents are equally subject to classification, although the director may consider their utility in controlling other non-indigenous species.

(C) *Listing Process*

1. A technical advisory committee, appointed by the Director, shall be formed to assist and make recommendations to the Director as to the listing of non-indigenous species according to the classifications above.
2. The list of classified non-indigenous species will include both common and scientific names, and authority and source of nomenclature.
3. The list of classified non-indigenous species shall be publicized among appropriate target groups within the state through the register, record, and other mechanisms. The list shall be available for public comment for a period of thirty days prior to the Director's approval. The Director shall consider public comments before final approval of the list of classified non-indigenous species.
4. The list of classified non-indigenous species shall be updated annually and as the Director sees fit according to the criteria in this Section.
5. Any person may petition the Director to add or change the classification of listed species.
 - a. In the case of a petition submitted under this Section, the Director shall act on the petition within a reasonable time and notify the petitioner of the final action the Director takes on the petition. The Secretary's determination on the petition shall be based on the listing criteria in 3(B) and the listing procedure outlined in Section 3(C)(1)-(3).

SECTION 4. Prohibited harmful non-indigenous species.

(A) *Prohibited activities.* A person may not possess, import, purchase, sell, propagate, transport, or introduce a prohibited species, except:

1. Under a permit issued by the Director under Section 7;
2. When being transported to the Department, or another destination as the Director may direct, in a sealed container for purposes of identifying the species or reporting the presence of the species;
3. When being transported for disposal as part of a harvest or control activity under a permit issued by the Director pursuant to Section 7 or as specified by the Director;
4. When the specimen has been lawfully acquired dead and, in the case of plant species, all seeds are removed or are otherwise secured in a sealed container;
5. In the form of herbaria or other preserved specimens;
6. As the Director may otherwise prescribe by rule.

- (B) *Seizure*. The Director may order the seizure or disposal of all specimens of prohibited non-indigenous species unlawfully possessed, imported, purchased, sold, propagated, transported, or introduced in the state.

SECTION 5. Restricted and unrestricted non-indigenous species.

- (A) *Permitted Activities*: Restricted species are legal to import, transport, purchase, possess, propagate, and sell unless restricted by the species' regulation pursuant to Section 7.
- (B) *Prohibited Activities*: It is illegal to introduce into water, wetlands, and land areas of the state a restricted species without a permit issued by the Director.
- (C) Unrestricted non-indigenous species refers to those species that have been evaluated as relatively harmless and therefore do not require any regulation or permitting for beneficial uses or under other circumstances.

SECTION 6. Unlisted non-indigenous species.

- (A) Those species that have not been classified as prohibited, restricted, or unrestricted will be considered as unlisted non-indigenous species.
- (B) *Prohibited Activities*: It is illegal to import, transport, purchase, possess, propagate, sell in the state, or introduce into water, wetlands, and land areas of the state any unlisted non-indigenous species.
- (C) *Application process for the classification and proposed use of the unlisted species*: A permit application form as prescribed by the Director must be submitted regarding the proposed use of the unlisted species involving its import, transport, purchase, possession, propagation, sale in the state, or introduction into water, wetlands, and land areas of the state. The applicant must present the best available scientific information on the unlisted species to support a sound management decision regarding its classification and proposed use.
- (D) *Classification and Review Process*: The Director will make the final decision regarding the classification and proposed use of the unlisted species based on the following sources of information:
1. Application of the criteria listed in Section 3(B) and the listing process in Section 3 (C) (1)-(3);
 2. A review of the application for the proposed use of the unlisted species; and
 3. Technical advisory committee recommendations.
- (E) For those species for which the technical advisory committee or the Director determine that the best available science is inadequate to make a sound decision regarding classification and proposed use of the unlisted species, the unlisted species shall remain an unlisted species pending further information.
- (F) *Notification*: The applicant will be notified of the Director's final decision regarding the proposed use of the unlisted species.

SECTION 7. Permits.

- (A) *Prohibited non-indigenous species*. The Director may issue a permit for the propagation, possession, importation, purchase, or transport of a prohibited non-indigenous species for the purposes of disposal, control, research, or education.
- (B) *Restricted non-indigenous species*. The Director may issue a permit for the introduction or a restricted non-indigenous species.
- (C) *Standard*. The Director may issue a permit under this Section only if the Director determines that the permitted activity would not pose an unreasonable risk of harm to native ecosystems or natural resources or their use in the state. The Director may deny, issue with conditions, modify, or revoke a permit under this Section as necessary to ensure that the proposed activity will not pose an unreasonable risk of harm to the native ecosystem or the natural resources or their use in the state.
- (D) *Appeal of permit decision*. A permit decision may be appealed as a contested case under this act.

SECTION 8. Rules.

- (A) *Required rules*. The Director shall adopt rules:
1. Designating prohibited, restricted, and unrestricted non-indigenous species; and
 2. Governing the application for an issuance of permits under this act, which may include a fee schedule.

- (B) *Authorized rules.* The Director may adopt rules regulating the possession, importation, purchase, sale, propagation, transport, and introduction of non-indigenous species.
- (C) *Expedited rules.* The Director may adopt rules on an expedited basis in accordance with the needs outlined in section 9 (A).

SECTION 9. Emergency Action Protocol.

- (A) *Emergency Action Plan:* The Director shall develop an emergency action plan and have the authority to implement the plan in case the sighting or emergence of a new non-indigenous species or the impact of an existing species necessitates such action. To the extent possible, the development and applicability of each state emergency action plan should be coordinated with other affected states, federal agencies, tribal authorities, regional organizations, and local jurisdictions.
- (B) *Protocol for the unintentional introduction of a non-indigenous species:* A person who allows or causes the introduction of a non-indigenous species that is prohibited or unlisted shall notify the Director or other appropriate management authority within 48 hours after learning of the escape. The person shall make every reasonable attempt to recapture or contain the introduced species.
- (C) A person who does not comply with this Section is subject to penalties specified in Section 10 (B)(6) Civil Penalties.

SECTION 10. Enforcement; penalties.

- (A) *Enforcement authority:* The provisions adopted in this legislation will be enforced based on authority established in Section 2 and implemented by licensed officers of the state.
- (B) *Civil penalties:* A person shall be issued a warning or assessed a civil penalty if engaging in conduct that violates regulatory provisions in the following Sections:
 - 1. Section 4. Prohibited harmful non-indigenous species;
 - 2. Section 5. Restricted and unrestricted non-indigenous species;
 - 3. Section 6. Unlisted non-indigenous species;
 - 4. Section 7. Permits;
 - 5. Section 8. Rules; and
 - 6. Failure to comply with the protocol for the escape of non-indigenous species as specified in Section 9.
- (C) *Criminal penalties:* A person shall be assessed a criminal penalty in engaging in the following acts of conduct:
 - 1. Violation of provisions pertaining to prohibited non-indigenous species, as specified in Section 4(A);
 - 2. Noncompliance with permit requirements pertaining to use of prohibited non-indigenous species, as specified in Section 7 (A);
 - 3. Violation of provisions pertaining to restricted species as specified in Section 5 (B);
 - 4. Violation of provisions pertaining to unlisted non-indigenous species as specified in Section 6(B);
 - 5. Refusal to obey enforcement requirements for inspection operations as established by the Director pursuant to Section 2 (C)(1) Program Implementation;
 - 6. Subsequent offenses in violation of any provision of this legislation; and
 - 7. Violations involving permit revocation orders or failure to pay fines pursuant to Section 10(B) Civil Penalties.